

**LAWRENCE B. LOCKWOOD, Plaintiff v. AMERICAN AIRLINES, INC.,
Defendant.**

Civil No. 91-1640-E(CM)

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA**

1993 U.S. Dist. LEXIS 19768; 29 U.S.P.Q.2D (BNA) 1637

September 21, 1993, Decided

September 21, 1993, Filed

JUDGES:

[*1] ENRIGHT

OPINIONBY:

WILLIAM B. ENRIGHT

OPINION:

MEMORANDUM DECISION AND ORDER

BACKGROUND

On July 30, 1993, the court entered a Memorandum Decision and Order granting defendant's motion for summary judgment on non-infringement grounds. On August 6, 1993, the clerk's office inadvertently entered judgment in this case.

Plaintiff now moves this court to clarify any uncertainty surrounding the judgment entered by the clerk's office by entering a final judgment in this case pursuant to Rule 54(b) as to plaintiff's claim of patent infringement. In addition, plaintiff asks that the court expressly determine that there is no just reason for delaying an appeal from the final judgment. The patent infringement claim is the only claim asserted in the complaint.

Defendant has asserted counterclaims seeking attorneys' fees and a declaration that the patents in suit are invalid. It argues that the invalidity counterclaim is crucial to the continuing conduct of defendant's computer reservation business. Thus, it argues that the court should decide the validity issue, despite the non-infringement ruling, so that defendant has the possibility of becoming free from future litigation by Lockwood involving

SABREvision. Defendant [*2] also argues that the court should deny plaintiff's motion because it is not likely to be successful and would unreasonably delay resolution of this case for more than a year.

DISCUSSION

Fed. R. Civ. P. 54(b) gives the court discretion to direct the entry of a final judgment as to one or more of the claims upon the express determination that there is no just reason for delay. Judgments under Rule 54(b) must be reserved for the unusual case in which the costs and risks of multiplying the number of proceedings and of overcrowding the appellate docket are outbalanced by pressing needs of the litigants for an early and separate judgment. *Frank Briscoe Co. v. Morrison-Knudsen Co.*, 776 F.2d 1414, 1416 (9th Cir. 1985).

Lockwood argues that Rule 54(b) relief is warranted because the judgment: 1) finally determined plaintiff's claim; and 2) the infringement issue is separate from the other claims for relief. See *W.L. Gore v. Intern Medical Prosthetics Research*, 975 F.2d 858 (Fed. Cir. 1992).

Additionally, plaintiff argues that the most efficient course of action for this court is to enter a final judgment on the infringement [*3] issue. However, all of plaintiff's arguments are effectively disposed of by a recent decision by the Supreme Court. See *Cardinal Chemical Co. v. Morton International, Inc.*, 124 L. Ed. 2d 1, 113 S. Ct. 1967 (1993).

First, plaintiff argues that the infringement issue finally determined plaintiff's claim. It cites Gore for the proposition that once the district court decides the infringement issue, it need not decide the invalidity issue. *Id.* However, the Supreme Court has recently

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